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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED] LP

Contact: [REDACTED], Tax Manager  
[REDACTED] LP

FINAL RULING NO. 2015-24  
June 25, 2015

Sales and Use Tax Assessments  
For the periods November 1, 2007 through December 31, 2010

### FINAL RULING

Kentucky Department of Revenue ("DOR") has an outstanding sales and use tax assessment against [REDACTED] LP ("LP") for the period November 1, 2007 through December 31, 2010. The following schedule reflects the total underpayment, including applicable interest accrued to date.

Period	Tax Due	Interest to 06/25/15	Total
11/01/07-12/31/07	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/08-12/31/08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/09-12/31/09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
01/01/10-12/31/10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

During the period of audit, [REDACTED] operated as a national independent hotel investment management firm headquartered in [REDACTED] managing [REDACTED] hotels in seventeen states. Since [REDACTED], 2007, [REDACTED] has managed the food and beverage revenue for [REDACTED], [REDACTED] located in [REDACTED], Kentucky; [REDACTED] also in [REDACTED], Kentucky; and [REDACTED] located in [REDACTED], Kentucky.

██████████ was audited for the period November 1, 2007 through December 31, 2010 and initially issued an estimated assessment of \$██████████. ██████████ timely protested the assessment. The Department reassigned the audit to the field after receiving assurance that proper records would be made available and provided for examination by ██████████. The resultant assessment was \$██████████. ██████████ timely protested the reassignment assessment stating that it did not agree with the assessment and contending specifically that it did not agree with the auditor using a percentage of error; that it was not given credit for exemption certificates; that appropriate deductions were not allowed; and, that ██████████ was taxed on several items held in the audit where tax had been paid. A subsequent payment totaling \$██████████ received ██████████, 2015 has reduced the total assessment to \$██████████.

At issue is whether ██████████ has met the supporting statement requirement of KRS 131.110(1) with respect to the audit assessment that remains under protest.

DOR requested documentation necessary to address ██████████'s protested liability. Among the requests were letters dated ██████████, 2012 and ██████████, 2013. DOR received a letter via email dated ██████████, 2013 from ██████████ stating information was being obtained and would be forwarded to DOR promptly. After another request from DOR dated ██████████, 2013, an emailed letter was received from ██████████ dated ██████████, 2013 with attachments. ██████████ claimed the information supported the protested issues. However, DOR found that the information had no relevance to the protested liability and could not be considered as valid supporting documentation.

DOR again requested that supporting documentation be submitted in letters dated ██████████, 2013; ██████████, 2013; and ██████████, 2013. After repeated requests, ██████████ has failed to provide supporting documentation to address its protested issues.

DOR contends that ██████████ has not met the supporting statement requirement of KRS 131.110(1) with respect to the assessment under protest.

KRS 131.110 requires that a supporting statement must accompany each protest itemizing the grounds for and information upon which the protest is made. The statement must set forth whether the protest is based on a factual disagreement and/or a disagreement in the interpretation of the applicable statutes. If there are disputed factual issues the company must provide financial statements, records or some other documentation which will allow the DOR some basis for reconsideration. Also, the statement must identify the specific adjustment(s) to which the protest relates.

The Kentucky courts have held that KRS 131.110 imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide DOR with "something more substantial than mere denials of tax liability." Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, Ky. App., 698 S.W.2d 528, 530 (1985). In order to make a valid protest, a taxpayer must "provide

financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration.” Id. at 529.

The courts have held that this statutory provision (KRS 131.110(1)) is “mandatory in nature” and that failure to submit documentation as it requires will result in the taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, Ky. App., 779 S.W.2d 234 (1989). In both Scotty’s Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

Therefore, the outstanding sales and use tax assessments totaling \$ ██████████ (plus applicable interest) are deemed legitimate liabilities of ██████████ LP due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

### APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner’s or appellant’s position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals (the “Board”) are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

DEPARTMENT OF REVENUE



Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED